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## Attorneys for the Defendant

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
The Honorable STANLEY ALLEN BASTIAN

United States of America,

Case No. 1:20-cr-2046-SAB

**Plaintiff,**

## **Motion for Discovery and/or to Compel**

V.

## **Yakima - With Oral Argument**

Charlie J. Peters,

February 4, 2021, at 6:30

## Defendant.

The defendant, Charlie Peters, respectfully moves this Court for an order directing the government to turn over unredacted discovery to defense counsel such that the undersigned can attempt to provide the effective assistance of counsel. The motion is made on the following record.

On December 8, 2020, the government indicted Mr. Peters on one count of sexual abuse, in violation of 18 U.S.C. § 2242. The act in question is alleged to have occurred in July 2020, and was apparently immediately reported to the authorities, who commenced an investigation at once. Mr. Peters was arrested on the indictment on January 4, 2020,

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1 and has remained in custody since. He was arraigned on January 5, and the undersigned  
2 entered an appearance on January 8.

3 On January 19, the 14<sup>th</sup> day from his arraignment, the government began turning  
4 over discovery, including heavily redacted reports, but not including the recordings of  
5 audio statements Mr. Peters and others made, which were provided over the Summer of  
6 2020. After defense counsel reviewed discovery, he contacted the assigned AUSA as to  
7 the redactions, and the non-production of the recordings. The AUSA indicated that he  
8 was declining to turn over unredacted discovery because of the age of the complainant (13  
9 at the time of the incident, 14 now) and the nature of the case. He also indicated that the  
10 recordings, including Mr. Peters' statements would be forthcoming, although we have  
11 not received them as of yet, 23 days following Mr. Peters' arraignment. Because the  
12 parties have been unable to resolve their discovery issues amongst themselves, in  
13 accordance with Local Criminal Rule 16, we require the Court's intervention.  
14

17 Among the redactions in the FBI 302s and other police reports are the names and  
18 identities of the complainant, her sibling (who appears to have been at least a partial  
19 eyewitness), her mother (who also appears to be an essential witness in the aftermath of  
20 the incident), and other key family members. Any identifying information as to who these  
21 people might be has been redacted. The government likewise redacted the location  
22 where the incident allegedly occurred, which is even an element of the charged offense  
23

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1 requiring that it be in Indian Country (although it later disclosed the address in e-mail  
2 correspondence).

3 These are hardly trivial matters. They go straight to Mr. Peters' ability to  
4 investigate the case and defend himself. And he, as well as defense counsel, are simply  
5 unable to do so in the face of such redactions, which at times even obscure what  
6 information is meant to be conveyed (beyond *who* is conveying it). Investigation and trial  
7 preparation is not a guessing game, or a puzzle that defense counsel should have to put  
8 together with the clues the government makes available to him. We are in the dark,  
9 effectively stymied by the government's obscurantism.

10 Rule 16(d) states, in no uncertain terms: "At any time *the court* may, for good  
11 cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.  
12 *The court* may permit a party to show good cause by a written statement that the court will  
13 inspect ex parte. If relief is granted, the court must preserve the entire text of the party's  
14 statement under seal." (emphasis added). It is the Court, not the government, that  
15 should decide upon any necessary or appropriate redactions. But the government here  
16 has usurped that power.

17 The Court's authority to regulate discovery is broad. *See United States v. Grace*,  
18 526 F.3d 499 (9th Cir. 2008). Even withholding a *confidential informant*'s identity must  
19 yield when relevant or helpful to the defense, or essential to a fair determination. *See*  
20 *Roviaro v. United States*, 353 U.S. 53 (1957). Disclosure is even more necessary when it  
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comes not to an informant, but the complainant. *See United States v. Grace*, 401 F. Supp. 2d 1093, 1100-01 (D. Mont. 2005) (directing unredacted disclosure of victim's medical information, beyond mere identity); *see also United States v. Diaz*, 2006 U.S. Dist. LEXIS 53428, at \*3, 7 (N.D. Cal. 2006), *vacated on other grounds*, 472 F.3d 1106 (9th Cir. 2007) ("The government has no more unilateral right to redact names of potential witnesses from Rule 16 documents than it does to blot out faces of potential witnesses in Rule 16 photographs. Only the district court can authorize such redactions in discoverable information. ... Once material is discoverable under [Rule 16](#), it is axiomatic that the Court may require *all* of it to be produced without any redactions.")) (emphasis in original). In a case with an apparent victim, what can be more basic than the complainant's identity? And how can Mr. Peters be expected to meaningfully defend himself without being made of who his accusers are?

Indeed, withholding the identity of the complainant is contradicted by other Federal Rules. For example, Fed. R. Crim. Pro. 17(c)(3), which governs early-return subpoenae, requires a court order when a defendant seeks to subpoena a third party for "personal or confidential information about a victim." It likewise requires notice to the victim so that he or she can move to quash or modify the subpoena or otherwise object." *Id.* But how can a defendant reasonably be expected to subpoena information about a victim unless he knows the identity of the victim? And how can he be expected to provide notice or respond to an objection if the victim's identity remains shrouded in secrecy? Motion for Discovery and/or to Compel

1 The answers, respectfully, are obvious: nothing about discovery restrictions or limitations  
2 is intended to deprive the defendant of essential knowledge about the charge against him,  
3 to include the complainant's name and identity, as well as those of other essential  
4 witnesses.  
5

6 There is a mechanism under the law to address the government's apparent  
7 concerns as to the minor status of the complainant and the nature of the allegations: a  
8 protective order under 18 U.S.C. § 3509(d)(3) that regulates public disclosure of  
9 identifying information. The government regularly seeks such an order in similar cases,  
10 and defense counsel routinely agrees to such protective orders. Here too, defense  
11 counsel indicated a willingness to enter into a protective order. Further, the text of  
12 subsection (d)(1) plainly contemplates that the "attorney for the defendant" has access to  
13 "documents that disclose the name or any other information concerning a child" [i.e.,  
14 government discovery].  
15

16 Likewise, subsection (d)(2) authorizes a party to file identifying information under  
17 seal, with redactions "to be placed in the public record." Thus, the law regulates  
18 disclosure of the identity of a minor victim of a sex offense *to the public*, but nothing about  
19 that procedure is intended to prevent or inhibit disclosure *to defense counsel*. The  
20 government's apparent interpretation here would render such provisions superfluous or  
21 meaningless, as making defense lawyers subject to protective orders only kicks in if we  
22 know identifying details.  
23

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1 Mr. Peters is not asking for sanctions. He is not asking for an admonishment. He is  
2 not seeking to preclude evidence. He is simply asking for what he is entitled to receive,  
3 by rule and by law. Further, without the basics as to the complainant and other key  
4 witnesses, we are unable to determine whether counsel has a conflict of interest that  
5 might necessitate withdrawal<sup>1</sup>. For these reasons, Mr. Peters respectfully moves for an  
6 order directing the government to produce unredacted discovery which does not obscure  
7 the names and identities of the complainant and other essential witnesses, and the  
8 relevant recordings as to his and others' statements.  
9

10  
11 Dated: January 28, 2021

12  
13 Respectfully Submitted,

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21  
22  
23 <sup>1</sup> On the limited basis of what we know, counsel in fact has a legitimate concern as to a  
24 current conflict of interest, but which remains speculative without the ability to confirm identifying  
information as to the complainant and/or her family members. This is hardly the way to provide  
25 effective, conflict-free and ethical representation.

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## **CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Michael D. Murphy and Matthew Stone, Assistant United States Attorneys.

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